

Assembly Hearing Slip

(Please print plainly)

Date: Feb 20, 1997
 Bill No. Assembly Bill 5
 Or
 Subject

LISA MORRISON
 (Name)

2811 AGRICULTURE DRIVE BOX 8911
 (Street Address or Route Number)

MADISON WI 53708-8911
 (City & Zip Code)

WI DEPT OF AGRICULTURE, TRADE +
 (Representing) CONSUMER PROTECTION

Speaking In favor: ☐
 Speaking against: ☐
 Registering In favor: ☐
 Registering against: ☒
 Speaking for Information only; Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

I AM HERE TO ANSWER
 ANY TECHNICAL QUESTIONS
 THAT THE COMMITTEE MAY
 HAVE

Assembly Hearing Slip

(Please print plainly)

Date: 2-20-97
 Bill No. AB 5
 Or
 Subject

Miss Werners
 (Name)

2820 Walton Campus W
 (Street Address or Route Number)

Madison 53704
 (City & Zip Code)

WI Representative Canyon
 (Representing)

Speaking In favor: ☐
 Speaking against: ☐
 Registering In favor: ☐
 Registering against: ☐
 Speaking for Information only; Neither for nor against: ☒

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. AB 5
 Or
 Subject

Paul Zimmerman
 (Name)

1212 Deming Way
 (Street Address or Route Number)

Madison WI 53705
 (City & Zip Code)

Werners Farm Bureau
 (Representing)

Speaking In favor: ☐
 Speaking against: ☐
 Registering In favor: ☒
 Registering against: ☐
 Speaking for Information only; Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. LRB 0064/2 Sub. Amnt
 Or
 Subject to ABS

MICHAEL R. VAUGHAN
 (Name)
P.O. BOX 2038
 (Street Address or Route Number)
MADISON, WI 53701
 (City & Zip Code)
CIBA CRIP PROTECTION
 (Representing)

Speaking in favor: ☐
 Speaking against: ☐
 Registering in favor: ☒
 Registering against: ☐
 Speaking for information only;
 Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. LRB 0064/2 Sub. Amnt
 Or
 Subject to ABS

DAVID FLAHER
 (Name)
22 BISHOPS AVE QUERE
 (Street Address or Route Number)
MADISON WI 53717
 (City & Zip Code)
WI AGRICULTURE BOARD
 (Representing)

Speaking in favor: ☐
 Speaking against: ☐
 Registering in favor: ☒
 Registering against: ☐
 Speaking for information only;
 Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

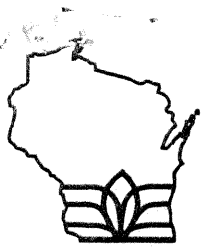
It is our understanding that a substitute amendment may be offered to provide a sunset for this exemption. This amendment does address one major concern in creating the unlevel farm field. However, it does not address our concern that the legislature would be supporting this exemption even over the recommendation of the agency that has followed a well established and legislatively reviewed procedure.

The recommendation to place this property in a prohibition area is consistent with other cases of atrazine contamination and must be treated similarly and represents the Department's fulfillment of the legal mandate to protect the groundwater from contamination. The amendment does not meet the requirement of the groundwater law that an alternative method will both achieve and maintain compliance with groundwater standards.

Therefore our organizations oppose an amended AB 5 that would still single out an individual property for exemption from designation as an atrazine prohibition area.

Thank you for this opportunity to present our views and concerns on AB 5.

Contact: Liz Wessel, 608-251-7020



Wisconsin Agribusiness Council

2820 Walton Commons West, Suite 132 • Madison, WI 53704-6797 • Phone (608) 224-1450 • Fax (608) 224-1452

February 20, 1997

To: Assembly Committee on Agriculture

Fm: Russ Weisensel, Director Legislative Affairs

Re: Assembly Bill relating to an atrazine prohibition area.

The original bill draft is inappropriate for it prohibits DATCP from creating an atrazine Prohibition Area (PA) in the particular site in question, regardless of any level of atrazine which might be detected in the future. A broader and more objective approach is necessary.

The proposed PA at the North Lancaster, Grant County site is just a symptom of the problem with Wisconsin's current groundwater regulations as they relate to agriculture.

It has been DATCP's philosophy that a single test over the ES triggers an atrazine prohibition area, unless the "weight of credible evidence" indicates that alternative measures would result in the atrazine in groundwater diminishing to a level below the ES.

The atrazine level in the well in question in Grant County dropped approximately 19% from July 6, 1994 to August 9, 1995. **Should not this official test by DATCP, and the extremely low levels of atrazine found in area wells, provided the "credible evidence" that the atrazine level in this area would stay below the ES of 3 ppb?**

Why didn't DATCP resample the Taylor well on November 20, 1995? Ninety days had expired since the August test. A second sample in 1995 would have helped to confirm or deny the declining trend shown in the previous tests.

Section 160.25 of the groundwater law relates to responses for specific sites when the enforcement standards are exceeded.

"160.25 (4) If compliance with the enforcement standard is achieved at the point of standards application, s. 160.23 applies."

Section 160.23 relates to responses for specific sites at the preventive action limit. It states in Section 160.23 (4) that a regulatory agency may not impose a prohibition on a substance, activity, or practice unless certain criteria, including *"Determining...that no other remedial action would prevent the violation of the enforcement standard..."*

We need to remember that atrazine has been widely used in our state for some 30 years. Wisconsin had no groundwater law until 1984, no atrazine groundwater standards until 1988, and no atrazine rule until March, 1991.

- more -

**Citizens For A Better Environment
John Muir Chapter of the Sierra Club
Wisconsin's Environmental Decade**

Statement to the Assembly Committee on Agriculture
In Opposition to AB 5, Exempting Land in North Lancaster,
Grant County from an Atrazine Prohibition
February 20, 1997

Our organizations oppose AB 5 which creates a permanent exemption for a specific parcel of land in North Lancaster, Grant County. This effort is misguided and undercuts Wisconsin's groundwater law and rule to prohibit the use of atrazine in contaminated areas.

Prior to this bill, Wisconsin had a level playing field for managing the use of and pollution from atrazine. We support the Department of Agriculture, Trade and Consumer Protection's efforts to implement the atrazine rule and by placing over one million acres in atrazine prohibition areas. The specific and permanent exemption in AB 5 contradicts the recommendations of both DATCP and the Ag Board. It creates the appearance that legislators are placing politics before the protection of natural resources and human health.

This bill sets a bad precedent of creating exemptions from pesticide and groundwater laws established to protect human and environmental health and to ensure a supply of safe drinking water. If this bill passes, every pesticide prohibition area designation could be subject to similar legislative challenges - not only for atrazine and not just for one parcel of land.

Furthermore, a vote in support of AB 5 is an attack on the state's ability to regulate the use of harmful pesticides. The designation of this property as an Atrazine Prohibition Area was objected to on the grounds that the proposed DATCP rule was "arbitrary and capricious". Our organizations disagree. DATCP is statutorily required by sec. 94.69, Wis. Stats., to consider the toxicity, hazard, effectiveness and public need for the pesticides, and the availability of less toxic or less hazardous pesticides or other means of pest control in making its decision.

To further safeguard against arbitrary action by the DATCP, Wisconsin's groundwater law (sec. 160.25, Wis. Stats.) provides that the regulatory agency be shown to a reasonable certainty, by the greater weight of credible evidence that some alternative response other than the prohibition will achieve compliance with the enforcement standard. Such a showing has not been made in this case.

February 20, 1997

- 2 -

Wisconsin Agribusiness Council

Since then we've added numerous restrictions on this product. The application rate has been severely curtailed. (Even in eastern Wisconsin counties where little or no atrazine has been detected.) It may only be applied by certified (trained) applicators/farmers. Strict regulations are in place for mixing and loading of atrazine. Fall applications are prohibited. We believe these strict regulations will, in many areas of Wisconsin, allow atrazine to be used without impairing the quality of our groundwater.

Certainly, DATCP's research in its 1995 "Exceedence Survey" report points that out. 122 wells that had previously exceeded our Enforcement Standard were tested. **Eighty-four percent** of these wells showed a decline in atrazine levels, and a full 54 % declined below the Wisconsin Enforcement Standard of 3 ppb.

In a 1996 study, DATCP tested 279 wells. Only two exceeded the enforcement standard. 130 had no detect, 72 tested at 0.1 or 0.2 ppb, and another 54 were between 0.3 and 0.6 ppb. Given the variability of test results at these incredibly low levels, one wonders whether or not these were actual detects of atrazine.

Nationally, based on current test data, the EPA changed its atrazine reference dose, the formula used in animal studies to assess risk. Minnesota, noting this change, has since established 20ppb as its health risk for private wells. Wisconsin not only maintains the current enforcement standard at 3ppb, our DNR included atrazine metabolites in calculating this enforcement standard. Neither the EPA, nor any other state has this restrictive formula. (See attached)

Since, presently there is no mechanism to rescind existing PA's, and since based on current test data, no other wells in this area are at risk to have atrazine levels approaching the ES, a bill needs to pass.

While we would prefer a complex amendment which would reference section 160.23, in particular *"that no other remedial action would prevent the violation of the enforcement standard,"* a simpler approach may be more practical.

It would be reasonable for you, at a minimum, to amend the bill so that DATCP could prohibit atrazine use in this area if a well exceeded the enforcement standard. Certainly that is in keeping with both the letter and spirit of our groundwater law.

Given the ample safety factors in Wisconsin's groundwater standards, we must not penalize any farmer growing corn in our state where the use of atrazine does not result in residue levels exceeding enforcement standard.

DATECP region V survey of atrazine groundwater standards for private wells (Compiled with data from Ned Zuelsdorff)

| STATE | WISCONSIN | ILLINOIS | INDIANA | IOWA | MICHIGAN | MINNESOTA |
|--------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------|------------------------------------------------|
| Do you have an atrazine standard? At what level? | Yes 3 ppb E.S 0.3 ppb PAL | Yes federal MCL of 3 ppb for Class 1. * Class 2 at 15 ppb. | No We use federal MCL of 3 ppb | No. We use federal MCL of 3 ppb for public water supplies only. | Yes 20% of federal MCL of 3 ppb | Yes Health Risk Level (HRL) of 20 ppb |
| Rule or guideline? | Rule | Rule | Guideline Notice given at 50%. Two wells replaced | NA | Rule | Rule |
| Any plans to change based on Rfd? | | No | | NA | ?? | Change has been made |
| If no standard exists, are you planning any? | NA | NA | Yes, through Great Lakes Initiative | No, it would be viewed as a license to pollute. | NA | NA |
| Do you look for metabolites? | Yes | Limitedly | Sometimes | ** There is little testing of private wells. | ***CIBA has tested 160 wells. | Yes |
| Have any been detected? | Yes | Unsure | Yes | NA | Detected in 27 | Yes |
| Any metabolite standards? | Total parent & metabolites included in standards. | No | No | NA | No | No |
| Considering such standards? | | Not a major issue here. | Hasn't been discussed. | NA | Not at present | Probably sometime in future |
| January 1997 WAC/RRW | | *Class 2 < 10 feet to surface | | ** USGS tests 1/3 of 270 wells annually w/no analysis done | *** MDA has tested 1486 wells for atrazine | |

REP. DAVID BRANDEMUEHL

ATRAZINE TESTIMONY

February 20, 1997

Thank you Rep. Ott and committee members for giving me this opportunity to testify in support of Assembly Bill 5, relating to atrazine use restrictions.

As many of you are aware, this legislation is a result of this committee's partial objection to Clearinghouse Rule 95-147 which would have imposed an unnecessary atrazine prohibition area in the Town of North Lancaster in Grant County.

For those of you who are new to this committee or who simply may not remember, I would like to take this opportunity to review the history of this legislation.

In 1994, DATCP ran one test of a shallow well located on a farm in North Lancaster. In that test, they detected an atrazine level of 3.55 ppb, slightly above the enforcement level of 3 ppb. Since a spill is believed to have occurred near the tested well, I asked DATCP to run more tests on that particular well and those in the surrounding area which would be included in the new prohibition area.

Six months later, in August of 1995, new tests revealed that all of the wells were within the legal limits. The well which previously tested at a level of 3.55 ppb, was now at 2.88 ppb, well below the enforcement level.

However, due to the inflexibility of the current atrazine laws, the Agriculture, Trade and Consumer Protection Board imposed the ban even though further tests showed compliance. Although the Board members expressed displeasure with their own actions, they felt it necessary to impose a ban even if just one test of one well showed a contamination level of 3 ppb or more.

As a result of DATCP's actions, this committee and the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions partially objected Clearinghouse Rule 95-147 in order to prevent an atrazine ban from going into effect in the specified area in Grant County. The Joint Committee on Review of Administrative Rules then upheld their objection and subsequently introduced Assembly Bill 5 and Senate Bill 20.

Unfortunately, the bills are slightly flawed. The drafting instructions were misunderstood and the bills, as they are, would permanently prohibit any atrazine bans in the specified area in Grant County. This was not the intent of either the agriculture committees or myself. Thus, we have had a substitute amendment drafted to simply prohibit an atrazine ban in this one particular instance. If approved, the amendment would allow a ban to be imposed at a later date if data indicates a need.

I urge your support of Assembly Bill 5.

Thank you.

ATRAZINE BILL NOTES

1994 - DATCP ran one test of one well which resulted in a 3.55 ppb atrazine level.

Six months later, I requested that DATCP retest this well and approximately 8 others in the proposed atrazine ban area to confirm that there was an atrazine contamination. All wells tested below the enforcement level. The initial well now tested at 2.88 ppb.

DATCP Board went ahead with Clearinghouse Rule 95-147 to impose an atrazine ban in the specified area.

Senate & Assembly agriculture committees partially objected to CR 95-147.

DATCP Board upheld their previous ruling.

JCRAR upheld agriculture committees' objections.

JCRAR introduced AB 5 & SB 20.

Substitute amendment.

Wisconsin State Journal February 15, 1997

Levels of atrazine fall 50 percent

By Rick Barrett
Agribusiness reporter

Levels of the dangerous herbicide atrazine have fallen dramatically across the state, agriculture officials said Friday.

As a result, the Wisconsin Department of Agriculture, Trade and Consumer Protection may consider lifting more atrazine bans that affect roughly 1 million acres of farmland.

"We should be able to reinstate the use of atrazine in areas that are cleaned up," said Nick Nehrer, administrator, agricultural resource management division.

The state has restricted the use

State considers lifting ban on corn herbicide

of the corn herbicide atrazine since 1991 after it detected the suspected caprothogen in about 12 percent of the state's 70,000 private wells.

About two-thirds of Wisconsin residents rely on ground water for their drinking water.

Recent ground-water well tests show atrazine levels are coming down — with concentration amounts dropping 50 percent statewide, from 1.2 parts per billion in 1994 to 0.66 parts per billion in 1996.

Since 1985, the number of acres treated with atrazine has declined 46 percent, and the amount applied to corn has declined 73 percent, according to agriculture officials.

Farmers and landowners have argued the state should lift atrazine bans if tests show that ground-water is no longer dangerous. They say the stigma of being in an atrazine-restricted zone devalues their property.

"There has been a lot of controversy," Nehrer said. "Some say we

have gone too far, while others say we haven't gone far enough."

Atrazine is still one of the most common herbicides in Wisconsin. But application levels are much lower than they were 10 years ago.

"Farmers deserve a lot of credit," Nehrer said. "Our study found that more than 80 percent of them are complying with the atrazine rule."

The state still has thousands of acres where atrazine contamination exists and the herbicide can't be used. The percentage of ground water with a detectable amount of

atrazine residue remains at 8.5 percent.

Farmers say new, low levels of atrazine will not cause fresh contamination.

But rescinding atrazine bans doesn't make sense if it allows ground water to be re-contaminated, said Keith Reopelle, associate director of Wisconsin Environmental Decade.

"Atrazine is a chemical that even at very low levels of application, can contaminate ground water," Reopelle said. "We don't think it makes sense to lift prohibition areas just because they have fallen below the state's (contaminant) standards."



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

February 14, 1997

PO Box 8911
Madison, WI 53708-8911

The Honorable Alvin Ott
State Assembly
Rm. 318 North Capitol
Madison, WI 53702

Re: 1997 Assembly Bill 5, atrazine use in portions of the Town of
North Lancaster, Grant County

Dear Representative Ott:

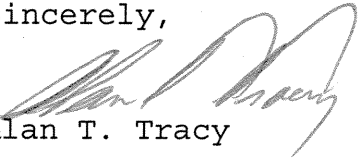
The Department of Agriculture, Trade and Consumer Protection has reviewed 1997 Assembly Bill 5. We are strongly opposed to the bill.

On November 14, 1995 the Board of Agriculture, Trade and Consumer Protection approved imposing a prohibition on the use of atrazine in the exact same area indentified in the bill. The Assembly Agriculture Committee asked the Board to reconsider, which it did on March 12, 1996. The Board again determined that an atrazine ban was appropriate, based on both the Groundwater Law and the department's groundwater protection rule, ATCP 31. This approach is consistent with all the prohibition areas that had been established after legislative review during the last five years.

The department feels that 1997 Assembly Bill 5 is special interest legislation that grants an unwarranted exception from the Groundwater Law and our administrative rule. This legislation treats this one small area differently than every other part of the state, violating the principle of equal treatment under the law. Furthermore, it would leave those people who live within the designated boundaries without the public health protection otherwise afforded to all.

Thank you for the opportunity to state our position.

Sincerely,


Alan T. Tracy
Secretary

Chairman:
Agriculture Committee



Member:
Environment & Utilities
Government Operations
Natural Resources
Rural Affairs

Al Ott

State Representative • 3rd Assembly District

To: Assembly Agriculture Committee Members

From: Representative Al Ott, Chair

Date: February 18, 1997

Re: Materials for 2-20-97 public hearing

Please find attached the following materials which you should bring to the public hearing and executive session on Thursday, February 20th at 11:00am in 417 N:

- 1) An Assembly Substitute Amendment to AB 5
- 2) A memo explaining the substitute amendment
- 3) A memo regarding the background of AB 5
- 4) A letter from the co-chairmen of the Joint Committee For Review of Administrative Rules regarding AB 5

Also, I have attached a report compiled by DATCP regarding Wisconsin's Atrazine Rule for your general information.

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



Public Hearing 11-12
REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 23, 1997

Representative Al Ott
Chair, Assembly Committee on Agriculture
Room 318 North
Madison, WI 53702

Dear Rep. Ott:

As you are aware, the Speaker has recently referred Assembly Bill 5, relating to atrazine use prohibition zones, to your committee for consideration.

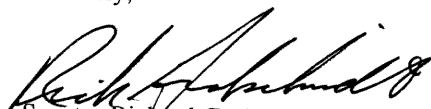
Because bills introduced by the Joint Committee are relatively rare, we wanted to bring to your attention s. 227.19(6)(b), stats. This paragraph sets forth the legislative procedure for the consideration of certain JCRAR bills. This statute applies to AB5, which was introduced subsequent to the concurrence of the joint committee to the objection of a standing committee to a Clearinghouse Rule. The statute provides for a 30-day review period by the standing committee, beginning at the date of referral.

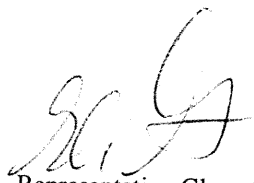
We wish to bring to your attention a known problem with the bill as it is currently written. The legislation would have the effect of prohibiting *ad infinitum* the imposition of an atrazine use prohibition zone in the area specified by the legislation. This was not the intent of the Joint Committee; the members of the JCRAR felt that the imposition of a prohibition zone was not appropriate *at this time*. The joint committee's specific introduction motion prohibited the co-chairs from repairing the bill draft before introduction. We urge the Assembly Committee on Agriculture to make the appropriate amendment to the legislation before reporting it out; you will find an attachment which is informative.

We further wish to make ourselves and our research staffs available to you if you have any questions about the legislation, its history, or the administrative rulemaking process which has lead to its introduction. Please feel free to contact either of our offices if you need any information.

Thank you for your attention and your time. We look forward to working with you as this legislation moves forward.

Sincerely,


Senator Richard Grobschmidt
Senate Co-Chairman


Representative Glenn Grothman
Assembly Co-Chairman

RG:GG:swk

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



Public Hearing 11-12
REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 23, 1997

Representative Al Ott
Chair, Assembly Committee on Agriculture
Room 318 North
Madison, WI 53702

Dear Rep. Ott:

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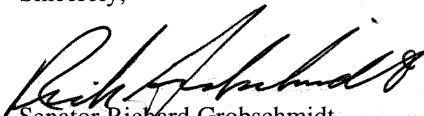
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We wish to bring to your attention a known problem with the bill as it is currently written. The legislation would have the effect of prohibiting *ad infinitum* the imposition of an atrazine use prohibition zone in the area specified by the legislation. This was not the intent of the Joint Committee; the members of the JCRAR felt that the imposition of a prohibition zone was not appropriate *at this time*. The joint committee's specific introduction motion prohibited the co-chairs from repairing the bill draft before introduction. We urge the Assembly Committee on Agriculture to make the appropriate amendment to the legislation before reporting it out; you will find an attachment which is informative.

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Thank you for your attention and your time. We look forward to working with you as this legislation moves forward.

Sincerely,


Senator Richard Grobschmidt
Senate Co-Chairman


Representative Glenn Grothman
Assembly Co-Chairman

RG:GG:swk



Wisconsin Agribusiness Council

2317 International Lane Suite 109 • Madison, WI 53704-3129 • (608) 249-2323 Fax (608) 249-279

June 19, 1996

To: Joint Committee for Review of Administrative Rules

Fm: Russ Weisensel, Director Legislative Affairs

Re: CR 95-147; LRB 5794 & 5795 relating to atrazine

The bill drafts are inappropriate for they prohibit DATCP from creating an atrazine Prohibition Area (PA) in the particular site in question, regardless of any level of atrazine which might be detected in the future. A broader and more objective approach is necessary.

The proposed PA at the North Lancaster, Grant County site is just a symptom of the problem with Wisconsin's current groundwater law as it relates to agriculture.

Atrazine has been widely used in our state for some 30 years. Wisconsin had no groundwater law until 1984, no atrazine groundwater standards until 1988, and no atrazine rule until March, 1991. Since then we've added numerous restrictions on this product. The application rate has been severely curtailed. It may only be applied by certified (trained) applicators/farmers. Strict regulations are in place for mixing and loading of atrazine. Fall applications are prohibited. We believe these strict regulations will, in many areas of Wisconsin, allow atrazine to be used without impairing the quality of our groundwater.

In spite of decades of use with no concern regarding the protection of groundwater, DATCP data indicates that only 2 %, or 195 of the 9,951 wells tested, had atrazine levels exceeding our strict enforcement standard, where it is thought the atrazine came from field use. (Another 1.8% exceed the enforcement standard from suspected point-source contamination.) Last fall, DATCP retested 122 wells that had previously exceeded our Enforcement Standard. Eighty-four percent of these wells showed a decline in atrazine levels, and a full 54 % have declined below the Enforcement Standard.

Nationally, based on current test data, the EPA changed its atrazine reference dose, the formula used in animal studies to assess risk. Minnesota, noting this change, has since established 20ppb as its health risk for private wells. (See attached.) Wisconsin not only maintains the current enforcement standard at 3ppb, our DNR included atrazine metabolites in calculating this enforcement standard. Neither the EPA, nor any other state has this restrictive formula.

- more -

ATCP 30, the rule to which you've objected, makes reference to ATCP 31 as it authorizes prohibition areas. (That rule is also attached.) DATCP is beginning its process to re-draft both of these rules. Given the fact that DATCP did not consider the testing in Grant County provided the "credible evidence" it needed to avoid establishing a prohibition area, I would suggest the change in ATCP 31.08 (1) as a *possible* solution to the present inequities:

On line 8 delete "shall" and insert "may".

On line 13 after "standard." insert "Prior to prohibiting a pesticide, the department must determine that no other management action will effectively result in a residue level below the Wisconsin Enforcement Standard, and an improvement in the area groundwater. In areas where a single well appears to have exceeded the Enforcement Standard through labeled use of the product, the department shall continue to monitor the well in question and other possible affected wells to ascertain whether the detection level is stable, increasing, or decreasing."



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 18, 1997
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: Mark C. Patronskey, Senior Staff Attorney
SUBJECT: Assembly Substitute Amendment __ (LRBs0064/2) to 1997 Assembly Bill 5,
Relating to Prohibiting Use of Atrazine

This memorandum has been prepared in response to your request for an explanation of LRBs0064/2, an Assembly substitute amendment to 1997 Assembly Bill 5, relating to the authority of the Department of Agriculture, Trade and Consumer Protection (DATCP) to prohibit the use of atrazine in a specified area in the Town of North Lancaster, Grant County.

7
1997 Assembly Bill 5 describes a specific area in the Town of North Lancaster, Grant County, which has been proposed by DATCP as an atrazine prohibition area in Clearinghouse Rule 95-147. The Bill provides that DATCP may not promulgate a rule prohibiting the use of atrazine in that area. The Bill was introduced as required by s. 227.19 (5) (e), Stats., to support the objection of the Assembly Committee on Agriculture and the Joint Committee for Review of Administrative Rules to that portion of Clearinghouse Rule 95-147. (The Clearinghouse Rule also created a number of other atrazine prohibition areas.)

LRBs0064/2 describes the same specific area as the Bill and the proposed rule. However, the substitute amendment makes two changes to the restriction on DATCP authority to promulgate a rule prohibiting the use of atrazine.

First, the Bill prevents DATCP from imposing an atrazine prohibition area in the area described in the Bill. The substitute amendment prevents DATCP from imposing an atrazine prohibition area *in any part* of the area described in the substitute amendment. This change avoids the unlikely possibility that DATCP would use the same two samples and describe a new prohibition area that differs slightly from the one described in the substitute amendment.

Second, the Bill simply prevents DATCP from imposing an atrazine prohibition in the described area. The substitute amendment provides that DATCP may not base an atrazine

(OVER)

prohibition on the two groundwater samples that were used by DATCP as the basis for recommending the prohibition area that is described in the substitute amendment. This frees DATCP to impose an atrazine prohibition in part or all of the area described in the substitute amendment based on groundwater samples taken after the effective date of the legislation.

If I can provide further information on this subject, please feel free to contact me.

MCP:lah;jt;wu

(OVER)



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 17, 1997
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: Ronald Sklansky, Senior Staff Attorney
SUBJECT: Legislative Review of Clearinghouse Rule 95-147, Relating to Atrazine Use Restrictions

This memorandum, prepared at your request, describes the procedure for legislative review of a proposed administrative rule following an objection to that rule by the Joint Committee for Review of Administrative Rules (JCRAR). Specifically, you have asked for a discussion of legislative alternatives regarding 1997 Assembly Bill 5 and 1997 Senate Bill 20, which is the legislation introduced in support of a partial rule objection made by JCRAR to Clearinghouse Rule 95-147, relating to atrazine use restrictions.

A. LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES

When an administrative agency submits a proposed administrative rule to the Legislature, the presiding officer of each house refers the rule to one committee. If the committees of both houses fail to take any action during the rule review period, the agency may complete promulgation of the proposed rule. However, a committee may object to all or part of a proposed rule. [See s. 227.19 (2) and (4), Stats.]

If a reviewing committee objects to a proposed rule, the rule must be referred to JCRAR. The JCRAR may nonconcur in a rule objection, seek rule modifications or object to the rule. If JCRAR objects to a rule, a bill must be introduced in each house of the Legislature to prevent the promulgation of the rule. Generally, if both bills are defeated, or fail to be enacted in any other manner, the agency may promulgate the proposed rule that received the objection. If either bill is enacted, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation. [See s. 227.19 (5), Stats.]

Upon introduction of the objection-sustaining bills, the presiding officer of each house of the Legislature must refer the bill to an appropriate committee, to the calendar scheduling committee or directly to the calendar. If a committee to which a bill is referred makes no report within 30 days after referral, the bill must be considered reported without recommendation.

However, no later than 40 days after referral, the bills must be placed on the calendar of each house. Further, an objection-sustaining bill that is received in the second house must be referred, reported and placed on the calendar in the same manner as in the house of origin. [See s. 227.19 (6) (b), Stats.]

B. DISCUSSION

On August 11, 1995, the Department of Agriculture, Trade and Consumer Protection (DATCP) began the formal promulgation process for Clearinghouse Rule 95-147. On April 19, 1996, the Assembly Committee on Agriculture objected in part to a portion of the rule. A similar objection was made by JCRAR on May 15, 1996. The portion of the proposed rule objected to prohibits the use of atrazine in a specified area in the Town of North Lancaster in Grant County. 1997 Assembly Bill 5 and 1997 Senate Bill 20 have been introduced in the current Session of the Legislature in order to sustain the objection to Clearinghouse Rule 95-147. Senate Bill 20 has been reported without recommendation by the Senate Committee on Agriculture and Environmental Resources and is awaiting placement on the Senate Calendar. Assembly Bill 5 currently is under the jurisdiction of the Assembly Committee on Agriculture. The Assembly Committee apparently is considering a substitute amendment to the bill.

The possible outcomes of the proposed legislation include the following:

1. If Senate Bill 20 is placed on the calendar within 40 days of the bill's initial referral, the Senate may act on the measure or rerefer the bill to another location. Section 227.19 (6), Stats., does not require that the Legislature vote on an objection-sustaining bill when it reaches either house's calendar.
2. If Senate Bill 20 is not placed on the calendar within 40 days after the bill's initial referral, a contention might be raised that the bill has failed of enactment for purposes of continuing an objection to Clearinghouse Rule 95-147. Even if this were the case, and this result is not clear, the objected to portion of Clearinghouse Rule 95-147 could not be promulgated, since both bills introduced to sustain the objection could not be said to have failed of enactment. Again, both bills must fail of enactment before the objected to rule may be promulgated.
3. The Assembly Committee on Agriculture may report Assembly Bill 5 without recommendation or report Assembly Bill 5 to the Assembly, as amended by any simple or substitute amendment. As in the Senate, if the bill is placed on the calendar within 40 days after its initial referral, the Assembly may take action on the measure or rerefer it to any other location.
4. If a bill is passed in either house of origin, the bill will be sent to the other house and face the same procedural requirements that applied in the house of origin.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:ksm;jt

Vote Record

Assembly Committee on Agriculture

Date: 2/20/97
 Moved by: Gronemus Seconded by: Ott
 AB: 5 Clearinghouse Rule: _____
 AB: 6 SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- ☒ Passage *as amended by ASA LRBs 0064/2*
☐ Introduction
☐ Adoption
☐ Rejection

- ☐ Indefinite Postponement
☐ Tabling
☐ Concurrence
☐ Nonconcurrence
☐ Confirmation

Committee Member

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-----------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Rep. Alvin Ott, Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Sykora | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Ainsworth | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Eugene Hahn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Clifford Otte | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. David Ward | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Zukowski | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Rick Skindrud | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Barbara Gronemus | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Marty Reynolds | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Springer | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Dueholm | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Steinbrink | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Joe Plouff | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Totals: | <u>10</u> | <u>4</u> | <u>0</u> | <u>0</u> |

☒ Motion Carried

☐ Motion Failed

Vote Record

Assembly Committee on Agriculture

Date: 2-20-97
 Moved by: Gronemus Seconded by: Sykora
 AB: 5 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: LRB 50064/2
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- ☐ Passage
☒ Introduction
☐ Adoption
☐ Rejection

- ☐ Indefinite Postponement
☐ Tabling
☐ Concurrence
☐ Nonconcurrence
☐ Confirmation

Committee Member

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-----------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Rep. Alvin Ott, Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Sykora | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Ainsworth | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Eugene Hahn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Clifford Otte | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. David Ward | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Zukowski | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Rick Skindrud | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Barbara Gronemus | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Marty Reynolds | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Springer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Dueholm | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Steinbrink | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Joe Plouff | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Totals: | <u>14</u> | <u>0</u> | <u>0</u> | <u>0</u> |

☒ Motion Carried

☐ Motion Failed

Vote Record

Assembly Committee on Agriculture

Date: 2/20/97
 Moved by: Zukowski Seconded by: Gronemus
 AB: 5 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: see 4/2
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- ☐ Passage
- ☐ Introduction
- ☒ Adoption
- ☐ Rejection

- ☐ Indefinite Postponement
- ☐ Tabling
- ☐ Concurrence
- ☐ Nonconcurrence
- ☐ Confirmation

Committee Member

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-----------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Rep. Alvin Ott, Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Sykora | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Ainsworth | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Eugene Hahn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Clifford Otte | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. David Ward | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Zukowski | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Rick Skindrud | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Barbara Gronemus | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Marty Reynolds | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Springer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Robert Dueholm | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. John Steinbrink | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Joe Plouff | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Totals: 14 0 0 0

☒ Motion Carried

☐ Motion Failed

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. AB 5
 Or
 Subject _____

(Name) JILL JONAS
 (Street Address or Route Number) 101 S. WEBSTER
 (City & Zip Code) MADISON 53707
 (Representing) Dept. Natural Resources

Speaking in favor: ☐
 Speaking against: ☐
 Registering in favor: ☐
 Registering against: ☐
 Speaking for information only; Neither for nor against: ☒

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

Information - per notation of

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. AB 5
 Or
 Subject _____

(Name) Rep David Brandenberg
 (Street Address or Route Number) _____
 (City & Zip Code) _____
 (Representing) _____

Speaking in favor: ☒
 Speaking against: ☐
 Registering in favor: ☐
 Registering against: ☐
 Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/20/97
 Bill No. AB 5
 Or
 Subject _____

(Name) CARYL TORRELL
 (Street Address or Route Number) 222 S. Hamilton St #1
 (City & Zip Code) MADISON WI 53703-3301
 (Representing) Sierra Club, W's Environment and
Citizens for a Better Environment

Speaking in favor: ☐
 Speaking against: ☒
 Registering in favor: ☐
 Registering against: ☐
 Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
 Room 411 West
 State Capitol
 Madison, WI 53702